

Senate Bill 263
February 15, 2013
Presented by Bill Schenk
Senate Natural Resources Committee

Mr. Chairman and committee members, I am Bill Schenk, Legal Counsel for the Montana Department of Fish, Wildlife and Parks (FWP). I am here in opposition to Senate Bill 263.

The Montana Water Use Act generally requires that all new development or appropriations of water be permitted. However, section 85-2-306, MCA, provides that "a permit is not required before appropriating ground water by means of a well or developed spring . . . (A) with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit ...". SB 263 would create two categories of exempt well; commercial and residential. The amount of water that can be utilize through one well for a use associated with a residential household depends on the size of the parcel on which that household is sitting.

FWP believes that SB 263 is, fundamentally, a good idea. The concept represents a positive approach toward addressing the exempt well problem, which from the Department's perspective is the potential for adverse affects on surface water flows associated with the cumulative impacts of many wells. Unfortunately, there are two problems with the current version of the bill that prevent FWP from supporting it.

First, the term "commercial use" has long been used to describe water use for commercial retail enterprises. SB 263 defines commercial use to include everything not associated with a residential household. This definition will confuse the administration of water rights in Montana because commonly-used terms that describe the beneficial uses of water including stock, industrial, municipal, and even irrigation would be lumped into one definition. SB 263 could be strengthened by deleting the term "commercial use" from Section 85-2-306(3)(a)(i)(A)(l). That section could simply say; "35 gallons a minute or less, not to exceed 10 acre-feet a year, for a use associated with a residential household."

Second, while SB 263 limits the amount of water available for a residential use, it does not preclude an owner from putting in both a residential and commercial well on the same parcel. A simple amendment that limits the number of exempt wells to one for any parcel under 10 acres would vastly improve the bill. However, FWP would not be opposed to a second well for stock use.